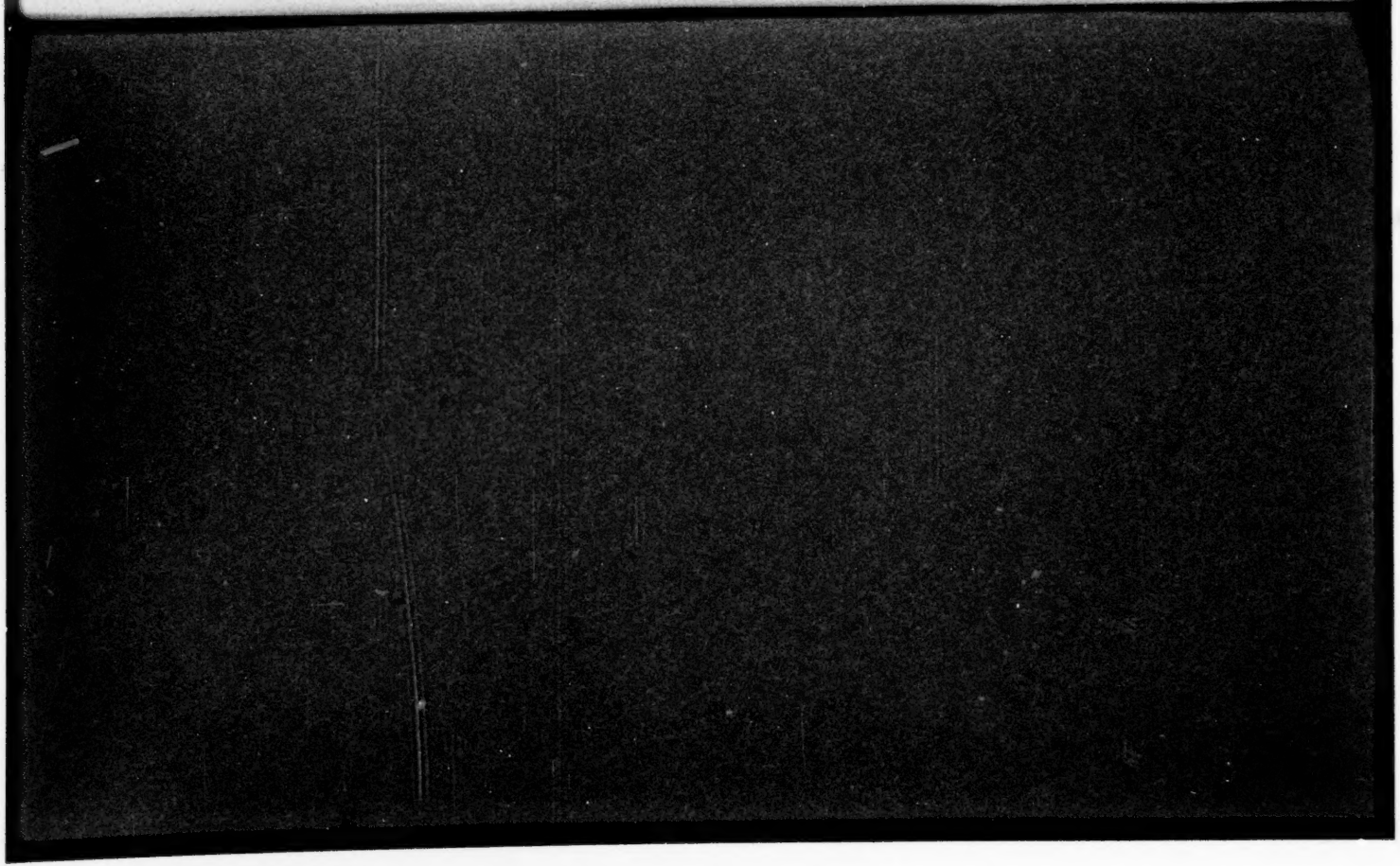

(25,276)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 472.

PAUL HILL SAUNDERS, PLAINTIFF IN ERROR,

vs.

DANIEL SHAW AND THE BOARD OF DRAINAGE COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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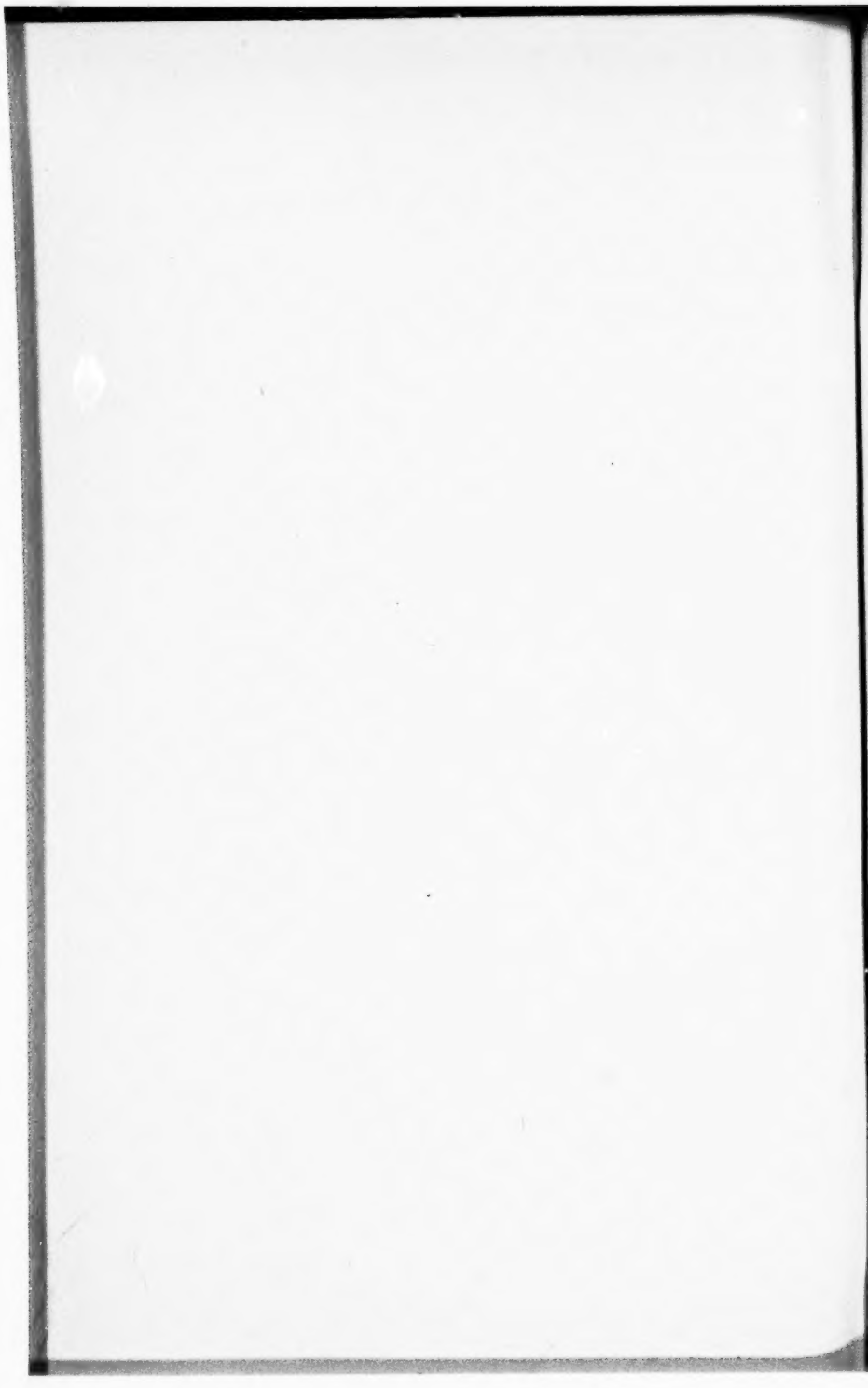

1 *Petition.*

Filed June 28th, 1913.

To the Honorable the 29th Judicial District Court for the Parish of St. Bernard, State of Louisiana:

The petition of Daniel Shaw, of full age and a resident of Thief River Falls, Minnesota, with respect represents:

I.

That he is the owner of the following described lands situated in this Parish and State, to-wit:

1st. All of Section 2, in Township 12, South Range 17, East, containing 571.5 acres.

2nd. All of Sections 1, 2, 11, 12 and 14 in Township 16, South Range 17 East, containing in the aggregate 2,697 acres.

3rd. All of Sections 20 and 22 in Township 15, South Range 17 East, containing in the aggregate 854 acres.

II.

That he acquired said land from Harley R. Welsh, on the — day of ——, 1910, and his title is duly registered in Conveyance Book 22, Folio 226 et seq., of this Parish of St. Bernard.

III.

That all of said above described lands lie outside of the levee system which the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District of St. Bernard Parish are building, or propose to build for the purpose of draining the lands within the drainage district, established by said Board, and that his said lands will not receive any benefit therefrom.

IV.

2 That his said above described lands have been erroneously assessed for the said drainage tax, and the assessment of said tax for the years 1911, 1912 and 1913 should be cancelled and annulled for the reason that in accordance with Section 21 of Act 317 of 1910 and Section 21 of Act 219 of 1912, such acreage tax shall only be imposed upon such lands in the districts as are especially benefitted by the drainage, and his said above described lands will not be benefitted by the drainage contemplated by said Board.

V.

That his said above described lands are now being advertised for sale for taxes due under said erroneous and illegal assessment of the

said acreage tax imposed for drainage; that said advertisement is contained in the Official Journal of the Parish of St. Bernard, "The St. Bernard Voice," and in accordance with said advertisement it appears that the Sheriff and Ex-Officio Tax Collector of the Parish of St. Bernard, Albert Estopinal, Jr., will on Saturday, the 28th day of June 1913, at 11 o'clock A. M. offer for sale your petitioner's above described property.

VI.

That your petitioner has tendered to the said Albert Estopinal, Jr., Sheriff and Ex-Officio Tax Collector of the Parish of St. Bernard, the full amount due said Tax Collector for State and Parish Taxes, together with all costs and penalties, and interest to date, and that said Tax Collector refuses to accept said tender for the reason that he claims that the property being assessed for acreage tax that same must be paid.

VII.

That the sale of your petitioner's property for taxes, would cause him irreperable injury, and that there is no adequate remedy
3 at law for him in the premises except by writ of injunction.

That the property above described is valued in excess of the sum of Two Thousand ($2,000.00) Dollars, same being assessed for Two Thousand and Sixty-one Dollars, ($2,061.00).

Wherefore, the accompanying affidavit being considered, petitioner prays that upon security being furnished in amount with the securities and conditions required by law, a writ of injunction issue herein restraining and enjoining Albert Estopinal, Jr., Sheriff and Ex-Officio Tax Collector of the Parish of St. Bernard, from selling at Tax Sale your petitioner's property above described; that Citation and a copy of petition be served on Albert Estopinal, Jr., Sheriff and Ex-Officio Tax Collector, also A. C. Gonzales, Assessor for the Parish of St. Bernard, and the Bayou Terre-aux-Boeufs Drainage District through its proper officer, and that after legal delays have elapsed and due proceedings had, there be judgment in favor of your petitioner and against said defendants, declaring the assessment of said property for the drainage tax above referred to, to be null, void and of no effect, and ordering the cancellation of same, and that there be further judgment perpetuating the injunction, and for costs and all general and equitable relief.

(Signed) OLIVER S. LIVAUDAIS,
Attorney.
" RICHARDSON & SOULE,
Of Counsel.

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared O. S. Livaudais, who being duly sworn, deposes and

4 says that he is one of the attorneys of plaintiff herein; that plaintiff is absent from the State; that all the allegations and facts contained in said petition are true and correct to the best of his knowledge and belief, and that a writ of injunction is necessary to protect plaintiff in the premises.

(Signed) OLIVER S. LIVAUDAIS.

Sworn to and subscribed before me on this 25th day of June, 1913.

(Signed) J. KENTON BAILEY,
[SEAL.] *Notary Public.*

Order.

Let writs of injunction issue herein as prayed for, according to law, upon petitioner furnishing bond for the sum of One Hundred and Fifty ($150.00) Dollars, conditioned as the law requires.

Parish of Plaquemines, La., June 26th, 1913.

(Signed) R. EMMET HINGLE, *Judge.*

Bond of Injunction.

Filed June 28th, 1913.

Know all men by these presents, that we, Daniel Shaw, as Principal and Oliver S. Livaudais, as security, of the Parish St. Bernard, and State of Louisiana, are held and firmly bound unto Board of Commissioners for the Bayou Terre-aux-Boeufs Drainage District, of St. Bernard; Albert Estopinal, Jr., Sheriff & Ex-Officio Tax Collector, and A. C. Gonzales, Assessor of the Parish of St. Bernard, in the sum of One Hundred and Fifty Dollars, lawful money
5 of the United States of America, to be paid to said Bayou Terre-aux-Boeufs Drainage District, Tax Collector, and Assessor of the Parish of St. Bernard; heirs, executors, administrators and assigns, for which payments well and truly to be made, we bind ourselves and each of us, by himself and each of our heirs, executors, administrators, firmly by these presents.

Sealed with our seals and dated the 27th day of June in the year of our Lord, 1913.

Whereas, the said Daniel Shaw, has this day presented a petition to the Honorable the 29th Judicial District Court for the Parish of St. Bernard, praying for a writ of injunction.

Now, the condition of the above obligation is, that we the above bound Daniel Shaw and Oliver S. Livaudais, will well and truly pay to the said Drainage District, Tax Collector and Assessor of the Parish of St. Bernard, the defendant in said suit, all such damages as they may recover against us, in case it should be decided that the injunction was wrongfully obtained.

(Signed) DANIEL SHAW,
Per OLIVER S. LIVAUDAIS, *Attorney.*
" OLIVER S. LIVAUDAIS.

Citation.

Issued June 28th, 1913.

STATE OF LOUISIANA,
Parish of St. Bernard:

29th Judicial District Court.

6 No. 900.

DANIEL SHAW

vs.

BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT OF ST. BERNARD PARISH et als.

To the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District of St. Bernard Parish et als., through its proper officer of the Parish of St. Bernard:

You are hereby summoned to comply with the demand contained in the petition of which a true copy accompanies this Citation, or deliver your answer to the same, in the office of the Clerk of the 29th Judicial District Court of Louisiana, in and for the Parish of St. Bernard, within ten days after the service hereof, adding one day for every ten miles distance from your place or residence to the Court House of this Parish and if you fail herein, judgment by default will be entered against you.

Witness the Hon. R. Emmet Hingle, Judge of the said Court this 28th day of June, 1913.

(Signed) JAS. D. ST. ALEXANDRE,
[SEALED.] *Clerk.*

Sheriff's Return on Citation.

Filed June 28th, 1913.

Received June 28th, 1913, and on the same day served in proper person.

(Signed) FERDINAND BEL,
C. D. Sh'ff.

Citation.

Issued June 28th, 1913.

STATE OF LOUISIANA,
Parish of St. Bernard:

29th Judicial District Court.

7 No. 900.

DANIEL SHAW

vs.

BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT OF ST. BERNARD PARISH et als.

To Mr. A. C. Gonzales, Assessor of the Parish of St. Bernard:

You are hereby summoned to comply with the demand contained in the petition of which a true copy accompanies this Citation, or deliver your answer to the same, in the office of the Clerk of the 29th Judicial District Court of Louisiana, in and for the Parish of St. Bernard, within ten days after the service hereof, adding one day for every ten miles distance from your place of residence to the Court House of this Parish and if you fail herein, judgment by default will be entered against you.

Witness the Hon. R. Emmet Hingle, Judge of the said Court, this 28th day of June, 1913.

(Signed) JAS. D. ST. ALEXANDRE,
Clerk.

[SEAL.]

Sheriff's Return on Citation.

Filed June 28th, 1913.

Received June 28th, 1913, and on the same day served in person.

(Signed) FERDINAND BEL,
C. D. Sh'ff.

Citation.

Issued June 28th, 1913.

STATE OF LOUISIANA,
Parish of St. Bernard:

29th Judicial District Court.

8 No. 900.

DANIEL SHAW

vs.

BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT OF ST. BERNARD PARISH et als.

To Mr. Albert Estopinal, Jr., Sheriff and ex-Officio Tax Collector of the Parish of St. Bernard:

You are hereby summoned to comply with the demand contained in the petition of which a true copy accompanies this Citation, or deliver your answer to the same, in the office of the Clerk of the 29th Judicial District Court of Louisiana, in and for the Parish of St. Bernard, within ten days after the service hereof, adding one day for every ten miles distance from your place of residence to the Court House of this Parish and if you fail herein, judgment by default will be entered against you.

Witness the Hon. R. Emmet Hingle, Judge of the said Court this 28th day of June, 1913.

(Signed) JAS. D. ST. ALEXANDRE,
[SEALED.] *Clerk.*

Sheriff's Return on Citation.

Filed June 28th, 1913.

Received on June 28th, 1913, and on the same day served in person.

(Signed) FERDINAND BEL,
C. D. Sh'ff.

Writ of Injunction.

Issued June 28th, 1913.

STATE OF LOUISIANA,
Parish of St. Bernard:

29th Judicial District Court.

The State of Louisiana to the Sheriff of the Parish of St.
9 Bernard, Greeting:

No. 900.

DANIEL SHAW

vs.

BOARD OF COMMISSIONERS OF THE BAYOU TERRE-AUX-BOEUFS DRAINAGE DISTRICT.

You are hereby commanded, enjoined, prohibited and restrained in the name of the State of Louisiana, and of the 29th Judicial District Court of Louisiana in and for the Parish of St. Bernard, from selling at Tax Sale, on Saturday, the 28th day of June, 1913, at 11 o'clock A. M. the property owned by Daniel Shaw, the plaintiff herein, which is described as follows, to-wit:

1st. All of Section Two, in Township Twelve, South Range Seventeen East, containing (517.5) acres.

2nd. All of Sections One, Two, Eleven, Twelve, Fourteen, in Township Sixteen, South Range Seventeen East, containing in all (2697) acres.

3rd. All Sections Twenty and Twenty-two in Township Fifteen, South Range Seventeen East, containing in all (854) Acres.

Witness the Honorable R. Emmet Hingle, Judge of our said Court this 28th day of June, A. D. 1913.

(Signed) JAS. D. ST. ALEXANDRE,
Clerk.

[SEAL.]

Sheriff's Return on Writ of Injunction.

Filed June 28th, 1913.

Received the writ of injunction herein mentioned and in obedience thereto, after giving public notice of this writ, I restrained from effecting the sale of the property assessed in the name of Daniel Shaw for taxes of the year 1912.

(Signed) ALBERT ESTOPINAL, JR., *Sh'ff.*

10 *Answer of Defendant.*

Filed July 14th, 1914.

Now into Court comes the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, through its undersigned Counsel, and respectfully submits that plaintiff herein has no interest in this cause for the reason that his property was sold for taxes for the year 1911, on the — day of ——, 1912, and was acquired by the State of Louisiana, and that the said property has never been redeemed by him, and, therefore, he is no longer the owner thereof and not interested in these proceedings; but only in the event that the exception of want of interest be overruled, and not otherwise, then your respondent appearing herein through its undersigned Counsel, submits:

I.

That respondent acknowledges that the said Daniel Shaw is the owner of the property designated in paragraph one of the petition filed herein.

II.

That defendant also admits that said Daniel Shaw acquired said property from Harley R. Welch, on the — day of ——, 1910, which shows registry in Conveyance Book 22, Folio 226, of the Parish of St. Bernard.

III.

Respondent denies that the lands in question lie outside of any levee system which the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District are building or propose to build for the purpose of draining the lands within the district, and denies specifically that the lands will receive no benefit from the system of taxation imposed upon them, but respondent specifically avers
11 that said lands are within the limits of the Drainage District and subject to all general drainages taxes voted by the property tax payers therein.

IV.

Respondent further denies that there has been any erroneous assessment of the drainage tax for the years 1911, 1912 and 1913, and denies more specifically that the tax has been imposed or levied under the terms and conditions set forth in Section 21 of Act 317 of 1910 or that there have been imposed any taxes for the purpose of reclaiming lands by artificial means, or by leveeing and pumping, as set forth in paragraph 3 of Article 281 of the Constitution of 1898, as amended in 1912.

V.

Your respondent admits that the lands *are* advertised for sale for taxes for the year 1912 and were advertised to be sold on the 28th day of June, 1913, when enjoined by these proceedings.

VI.

Your respondent denies that there was tendered to the Sheriff and Ex-Officio Tax Collector the amount of taxes due.

VIII.

Your respondent denies that the sale of the property could cause to the petitioner herein any injury whatsoever inasmuch as the property was sold for taxes, drainage as well as general taxes for the taxes due in 1911, but admits that the property is assessed for Two Thousand Sixty-one Dollars.

Now your respondent specifically represents that the Bayou Terre-aux-Boeufs Drainage District was organized by the Police Jury of the Parish of St. Bernard, by an ordinance passed on the 6th day of July, 1908, and assumed jurisdiction for the drainage purposes over all of the territory incorporated within the limits of said
12 Drainage District and within the boundaries set forth by the creating ordinance of the Police Jury, which said boundaries are specifically defined as follows:

The lower portion of the Third Ward of the Parish of St. Bernard, beginning at the upper line of the Poydras Plantation, all of the Fourth Ward, all of the Fifth Ward, all of the Sixth Ward, as they are at present constituted and situated, and all of that portion of the Seventh Ward, South of the North Township Line of Township 12, West of the East Range of Range 17.

Your respondent further submits that after the creation of the Drainage District as set forth by the Ordinance of the Police Jury in July 1908, the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District conducted litigation contradictorily with tax payers within that district to establish the validity of its creating ordinance and to establish the validity of the taxes authorized to be levied and bonds authorized to be issued at an election held in said Drainage District at that time and subsequent thereto. As the result of the authority conferred at election held in the district a bond issue of Sixty Thousand ($60,000.00) Dollars was authorized, based on a Three Cents an acre tax in the whole District. The bond issue was attacked by property tax payers and made the subject of specific litigation in the case of Baker vs. Board, 124 Louisiana, Page 216, wherein the Honorable Supreme Court of this State, affirming the validity of the creation of the said Drainage District and the validity of the bonds issued as the result of the election held, placed its stamp of approval upon the legal issues involved in its creation and involved in the indebtedness thus incurred.

Your respondent further represents that at another election held in the Bayou Terre-aux-Boeufs Drainage District on the 28th day of December, 1909, there was submitted to the property tax payers the proposition to authorize a bond issue of One hundred and sixty-five thousand ($165,000.00) Dollars, based on an acreage tax of Six Cents per acre per year, and that bond issue as well as the previous *of* of Sixty Thousand ($60,000.00) Dollars was sold at par, and the monies expended for the improvement of drainage in the Bayou Terre-aux-Boeufs Drainage District; that these various bond issues and the organization of the district itself antedated the acquisition by the petitioner in this cause of the property described by him and which, according to the allegations of his petition, he purchased on the — day of ——, 1910, registered in Conveyance Book 22, Folio 226, and that, therefore, when Daniel Shaw acquired from Harley R. Welsh, the property described in his petition, he acquired said property with full knowledge of the jurisdiction of the Drainage Board, with full knowledge of the jurisdiction limit of the Drainage Board, and with full knowledge of the taxes voted and imposed prior to the acquisition of the said property, and your respondent further represents that the said Daniel Shaw, paid the said Acreage Taxes due for the year 1910 upon said property and, therefore, acquiesced in their levy and imposition for drainage purposes.

Your respondent further represents that after the passage of the amendment to the Constitution known as Act No. 197 for the Session of 1910, whereby the authority was conferred upon the drainage districts in this State to reorganize to take advantage of the new conditions imposed by said amendment to the Constitution, the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District was reorganized on the 3rd *Third* day of December 1910, with the same limits and the same boundaries as previously established, and the commissioners were appointed for the reorganized district to carry into operation and effect the work of drainage auspiciously begun; that at an election held on the 10th day of January, 1911, the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District was authorized to levy a tax of Sixteen Cents per acre and to incur indebtedness and issue bonds to the extent of Five Hundred Thousand ($500,000.00) Dollars, to extend the operation of the drainage begun by the said Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, and at an election held on that date, said tax was authorized by the property tax paying voters of the District, and the bond issue also authorized; that this bond issue was seriously contested in the case of Geo. H. Randolph vs. Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, which case went to the Supreme Court and is reported in the 131 Louisiana Reports, Page 244, wherein the Supreme Court refused to declare null and void the tax of Sixteen Cents an acre voted therein, but declared that the bond authorized to be issued was not a good bond for the reason that the Board of Commissioners had failed to comply with Section 17 of act 317 of 1910. In that case the Court also held that the levy of taxes must be made each year and not at one time for the whole period of time for which the bond was to run,

but specifically held that all this would not be cause to invalidate either the tax or the bond. Complying, therefore, with the decision of the Supreme Court, the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District called an election after proper notice, on the 26th day of August, 1912, and submitted to the property tax payers qualified to vote at that election, the following propositions:

15 1st. To authorize the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District to incur an indebtedness of Five Hundred Thousand ($500,000.00) Dollars, to be evidenced by five hundred (500) negotiable bonds with interest bearing coupons attached, of One Thousand Dollars ($1,000.00) each, in conformity with the provisions of Article 281 of the Constitution and Laws of this State said bonds to be secured by and payable out of the annual contribution or acreage tax voted in this district at the election held on the 10th day of January, 1911, the said bonds to mature within Forty (40) years after their date, and to contain provisions for their prior redemption, at such times and in such amounts as the Board of Commissioners may, by resolution, determine, and said bonds to bear Five (5%) Per cent per annum interest from their date, payable semi-annually on the first day of August and February of each year, commencing with the first day of February 1913, and the proceeds of the sale of which bonds shall be devoted to the accomplishment of drainage work in said district as in the opinion of the Board of Commissioners may be most desirable.

2nd. To vote to confirm and approve the imposition and levy of an annual contribution or acreage tax of Sixteen Cents per acre, voted at election held in this District on the 10th day of January, 1911, the said tax to run for a period not longer than Forty (40) years from the date of its imposition and the said tax to be funded into bonds in accordance with law.

3rd. To vote to ratify and approve the bond issue of Sixty Thousand ($60,000.00) Dollars, ratified at an election held on the 14th day of June, 1909.

4th. To vote to ratify and approve the bond issue of One Hundred and Sixty-five Thousand ($165,000.00) Dollars, voted at an

16 election held on the 28th day of December, 1909.

Your respondent further submits that the election was held as set forth, the returns of said election were duly canvassed by the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District and that a tax to the maximum extent of Sixteen (16¢) Cents an acre was duly authorized to provide for the retirement in principal and interest of a bond issue of Five Hundred — ($500,000.00) Dollars, for drainage work in the said Bayou Terre-aux-Boeufs Drainage District.

Your respondent further represents that pending this litigation the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District actively progressed with the work of drainage, with the opening of natural outlets in said district and the principal work that has been done in said drainage district to this date has been the opening of the natural outlets in the said drainage district, notably the clear-

ing out and dredging of Bayou Terre-aux-Boeufs, of Bayou La Loutre and the digging of additional canals to make, as far as it lies within the power of the Board, a continuous and comprehensive system of drainage that would be resultant of the greatest good to the greatest number of property holders in the district.

Your respondent further submits that it has expended in the said drainage district, out of the bonds thus authorized, the entire amount of the first bond issue of Sixty Thousand ($60,000.00) Dollars, which was sold at par, the entire amount of the bond issue of One Hundred and Sixty Five Thousand Dollars ($165,000.00), which was sold at par, and approximately Two Hundred and Fifty Thou-
sand ($250,000.00) Dollars of the Five Hundred Thousand
17 ($500,000.00) Dollar bond issue lastly referred to, and which
have been sold at par to pay for the work of general drainage in the said Bayou Terre-aux-Boeufs Drainage District.

Your respondent further submits that the Bayou Terre-aux-Boeufs Drainage District do not propose and do not contemplate with the taxes hereabove referred to, to reclaim by leveeing and pumping any portion of the lands included within the limits of the Bayou Terre-aux-Boeufs Drainage District, but simply propose a comprehensive scheme of general drainage that will give outlet for all of the waters in the said Bayou Terre-aux-Boeufs Drainage District. That subsequent to all of these proceedings there have been created in said Bayou Terre-aux-Boeufs Drainage District three sub-drainage Districts, which sub-drainage districts are making use of the general work for general drainage inaugurated by your respondents herein, and which sub-drainage districts have by petition of two-thirds of the number of acres in the sub-drainage district affected; asked for bond issues to accomplish the reclamation of leveeing and pumping of the particular acreage within the limits of said sub-drainage district, but that petitioner's property is in no wise included in any of the subdrainage districts yet formed, and is in no wise affected by the taxes levied for the benefit of such particular sub-drainage districts and, therefore, is not concerned or interested in the development of said sub-drainage districts or in the levy of taxes inaugurated therein.

Your respondent avers, however, that petitioner herein has received an enormous benefit and is receiving an enormous benefit from the general drainage taxes levied in the Bayou Terre-aux-Boeufs Drainage District, for the reason that there has been an
enormous enhancement in the valuation of properties in the
18 said District since the work of general drainage has been
begun and since the active dredging of the natural outlets of said drainage district have been inaugurated.

Respondent further avers that petitioner's lands have been and will enhance in value as a result of the work accomplished and to be done and will be more valuable if he does with his lands what other property owners are doing with theirs, i. e., to have them incorporated in a sub-drainage district and to have them leveed and pumped by artificial means to accomplish their complete reclamation and that, to that end, respondent is willing and has always been

willing to encourage any property holder in the development of his holdings and in making the same available for cultivation and use, but respondent avers and believes that petitioner is merely speculating on the enhanced valuation of lands without wishing to pay for the general work of public improvement.

Now, respondent submits that petitioner herein simply undertakes a general and wholesale and indiscriminate attack upon a system of drainage taxation in this district, the only property holder of record objecting to the system of taxation after subscribing his ac-uiescence heretofore by the payment of said tax, and after subscribing his acquiescence by the purchase of the property subject to the exactions and conditions of property tax payers qualified to vote, and after submission of his property and himself to the jurisdiction of a constituted agency of the State.

Your respondent further submits that all of the taxes referred to herein have — regularly authorized at an election of the property tax payers qualified to vote; that the taxes have been properly assessed and levied; that the bond issues have been authorized as the
19 result of said elections; that the elections have been regularly held and have not been contested on any ground of fraud. The period of time fixed by the statutes, notably by Act 256 of 1910 and Act 218 of 1912 prescribe a period of time, Sixty (60) days, wherein the property tax payer has a right to appear to contest the validity of any tax voted at an election of the people in any given district, and no contest was made within the period of time fixed by law, either by the petitioner herein or by any other tax payer or person in interest and respondent pleads this legal estoppel.

In addition to this your respondent further avers, that Article 281 of the Constitution of Louisiana was amended by the terms and conditions of Act 132 of the Session of 1912 and that paragraph two of said Article provides that "all bond issues heretofore authorized by tax payers in any subdivision at any election not contested on any ground of fraud, are hereby recognized and validated," that all of the taxes heretofore enumerated and all of the bond issues heretofore set forth in said district were authorized by property tax payers prior to the passage of this Article at an election of the people held on the — day of November 1912, and that this amendment to the Constitution, as adopted by the people in November 1912, is a sweeping validation of all bond issues where no contests on any ground of fraud has been raised against said election authorizing said bond issue; that, therefore, every one of the bonds issued by the Bayou Terre-aux-Boeufs Drainage District authorized at an election of the people as set forth in this answer and as attacked by the plaintiff in his petition herein, are covered by the sweeping validation as set forth, and are not subject now to attack by the property tax payers.

20 Your respondent further avers that in absolute good faith and relying upon the various legal conditions herein set forth, it has sold the bond issues as enumerated in this answer, and that the said bonds have gone in the hands of innocent third parties who are relying upon the good faith of your respondent board to carry

out the terms of the contract whereby the said bonds are to be paid in principal and interest; that according to the certificate of the Assessor of St. Bernard Parish, it is shown that there are (220,000) Two hundred and Twenty thousand acres of land subject to taxation and that that number of acres at the maximum rate of taxation was duly considered in figuring out the scheme of redemption of the bonds.

Your respondent further sets forth that any impairment of the terms of that contract by the releasing of any property owners from the obligation to pay the taxes imposed, would be an impairment of the obligation of the bonds thus issued in good faith and held in good faith by those who have taken the same; that every bond was sold and converted into cash, the said cash has been paid out for actual work done and labor performed in the construction of canals and in the opening of the natural outlets as shown in this answer, located within the limits of the said Bayou Terre-aux-Boeufs Drainage District, all of which was necessary and is necessary to accomplish a comprehensive system of drainage in said district and to allow the successive formation of various sub-drainage districts or reclamation units in the territory over which your respondent has jurisdiction.

Respondent specifically avers that the Bayou Terre-aux-Boeufs Drainage District is composed partly of lands that are high and subject to drainage by gravitation without the necessity of leveeing and pumping, and largely of lands that are low and marshy and that are unfit for cultivation unless subjected to reclamation
21 by leveeing and pumping, but that the great bulk, almost the entire acreage of low marshy lands, owes a servitude of drainage to the higher lands which are to be drained by gravitation; that in order, therefore, to create the comprehensive system of drainage necessary to take care of all of the waters of the drainage district, it was essential and necessary to deepen, open and clear the natural outlets and bayous that form the natural drains of the entire district, and to make such connections of canals with such natural outlets as would at least place natural drainage in reach of the large bulk of the property in the drainage district, to place it in such reach at least, as would give every reclamation unit formed in that district an outfall into the drainage system of the district.

Therefore, your respondent submits that the suit of this plaintiff should be dismissed.

Wherefore, your respondent prays that the injunction herein issued be dissolved and that the suit of plaintiff be dismissed at his cost, and that there be judgment recognizing the validity of the proceedings entailed by respondent in levying the taxes to take care of the various bond issues that have been issued in this district, and for all general and equitable relief.

(Signed) N. H. NUNEZ,
H. L. FAVROT,
Att'ys for Def't.

Petition of Intervention of Dr. Paul Hill Saunders.

Filed December 19th, 1913.

To the Honorable Judge of the above entitled Court:

22 The petition of intervention of Dr. Paul Hill Saunders, a citizen of the State of Mississippi, and residing in the town of Laurel, said State, with respect shows:—

1.

That he is interested in the outcome of this suit, and desires to become a party thereto by uniting with the defendant in resisting the claims of the plaintiff.

2.

Petitioner represents that he is the owner of three bonds issued by the Bayou Terre-aux-Boeufs Drainage District, of St. Bernard Parish, La., bearing Nos. 5, 8 and 105, dated February 1st, 1910, payable February 1st, 1950, each for the sum of One Thousand Dollars; which said bonds were issued by said District pursuant to proceedings in respect to and authorized at an election December 28th, 1909.

3.

That petitioner joins defendant in resisting the demands of plaintiff, and adopts all the averments of defendant, contained in its answer, copy of which is hereto annexed and made part hereof.

Wherefore, petitioner prays that it may please the Court to grant him leave to file this intervention; that the same may be served upon the plaintiff by delivery of citation and a copy of this petition and annexed documents to —— —— counsel for plaintiff in the above entiled suit; and in due course of law that there be judgment herein in favor of defendant and intervenor and against the plaintiff, rejecting the said plaintiff's demand at his costs.

And for all general and equitable relief.

(Signed) PAUL A. SOMPAYRAC,
Attorney for Intervenor.

23 STATE OF LOUISIANA,
Parish of Orleans:

Let this intervention be filed as within prayed for and according to law.

Parish of St. Bernard, December 16th, 1913.

(Signed) R. EMMET HINGLE,
Dist. Judge.

STATE OF LOUISIANA,
Orleans Parish:

Before me the undersigned Notary Public personally came and appeared Dr. Paul Hill Saunders, who upon being duly sworn deposes and says:—that all of his allegations contained in the foregoing petition of intervention, are true and correct, and that from information received that he believes the allegations contained in the copy of answer of Commissioners of Bayou Terre-aux-Boeufs Drainage District, attached to affiant's petition are true and correct.

(Signed) P. H. SAUNDERS.

Sworn to and subscribed before me at New Orleans, La., this 17th day of December, 1913.

(Signed) THOS. E. FURLOW,
[SEAL.] *Notary Public.*

Citation waived, Service accepted. All rights reserved. Dec. 18th, 1913.

(Signed) RICHARDSON & SOULE,
Att'ys for D. Shaw.

Copy of Answer of Defendant Annexed to Petition of Intervention.

For Answer of Defendant see Page *Nine* of this transcript.

24 *Motion of H. L. Favrot, Resigning as Counsel.*

Filed January 19th, 1914.

On motion of H. L. Favrot of record as counsel for defendant Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, and on suggesting to the Court that he prepared a resolution to be passed by the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District, asking them to request his employment as Special Attorney for said Board, said employment to be approved and confirmed by the Governor and the Attorney General of the State, in conformity with Act No. 125 of the Legislature of 1912, and on further suggesting to the Court that the Board of Commissioners of the Bayou Terre-aux-Boeufs Drainage District at its session on Saturday, January 10, 1914, refused or failed to pass the said resolution or take any action thereupon, and

On further suggesting to the Court that special counsel cannot represent public boards under the terms and conditions of Act 125 of 1912 unless specially appointed as therein designated, and that, therefore, mover herein has no authority in fact or in law to appear as counsel for the said Board,

It is ordered, that mover's appearance as counsel for the said Board and as shown by the answer filed herein, be and is hereby vacated, and he is released from any obligation whatsoever to defend the suit of the said Board, and that his name be stricken from the record as counsel for the said Board.

January 19th, 1914.

(Signed) R. EMMET HINGLE, *Judge.*

25 *Motion of Intervenor Retaining H. L. Favrot as Counscl.*

Filed January 19th, 1914.

On motion of Paul H. Saunders, Intervenor herein, through Paul A. Sompayrac, his counsel, and on suggesting to the Court that mover is desirous of retaining the services of the Honorable H. L. Favrot, in this cause.

It is ordered, that the Honorable H. L. Favrot be placed on record as counsel representing the intervenor in this cause.

(Signed) PAUL A. SOMPAYRAC.

Act of Sale by Harley R. Welch to Daniel Shaw.

Filed in Evidence by Plaintiff February 9th, 1914.

STATE OF MINNESOTA,
County of Hennepin:

Be it known that on this the 11th day of July, A. D. 1910, before me, Peter Schall, Notary Public in and for the said County and State, personally came and appeared Harley R. Welsh, of Minneapolis, Minn., who declared and acknowledged that for and in consideration of one dollar and other valuable consideration cash in hand paid the receipt whereof is hereby acknowledged, that he sold, conveyed, delivered and by these presents does sell, bargain, assign, transfer, set over and deliver with full warranty of title unto Daniel Shaw, accepting the sale for his heirs and assigns, the following property together with the improvements and appurtenances thereunto belonging, situated in the Parish of St. Bernard, State of Louisiana, to-wit:—and described by Township, Range, (all being East) Section and extent in acres, as follows:

26

Township.	Range.	Section.	No. of acres.
12	17	2	571.5
16	17	1	638.
16	17	2	605.
16	17	11 N. ½ S. E. ¼	480.
16	17	12	472.
16	17	14	502.
15	17	20	457.
15	17	22	397.
Total			4122.5

To have and to hold the said above described property unto the said purchaser his heirs and assigns forever.

The parties to this act agree to dispense with the production of the Certificate of Mortgage required by Article 3364 of the Civil Code of the State of Louisiana, and exonerate me, said Notary, from any liability in the premises.

Thus Done and Passed in the presence of Frank B. Jordan, and James Meehan, Jr., witnesses of lawful age and domicile who hereunto sign their names together with the said parties and me, the said Notary.

(Signed) HARLEY R. WELSH.
DANIEL SHAW.
PETER M. SCHALL,
Notary Public, Hennepin Co., Minn.

My Commission Expires June 16th, 1913.

FRANK B. JORDAN.
JAMES MEEHAN, JR.

STATE OF MINNESOTA,
County of Hennepin:

Be it known that on this 11th day of July, 1910, before me, Peter M. *M.* Schall, a Notary Public in and for the County and State aforesaid, personally came and appeared Harley R. Welsh, and
27 Daniel Shaw, to me known who in the presence of the subscribing witnesses Frank B. Jordan and James Meehan, Jr., signed the aforesaid instrument and acknowledged the same to be their free act and deed.

(Signed) PETER M. SCHALL,
[SEAL.] *Notary Public, Hennepin County, Minn.*

My Commission Expires June 16, 1913.

FRANK B. JORDAN.
JAMES MEEHAN, JR.

Duly Recorded at the Parish of St. Bernard on the 14th day of July, A. D. 1910.

(Signed) JAS. D. ST. ALEXANDRE,
Clerk, ex-Officio Recorder.

I hereby certify the above and foregoing to be a true and correct copy of the Original Act of Sale by Harley R. Welsh to Daniel Shaw as the same appears recorded in the Conveyance Office of the Parish of St. Bernard in Book No. 22 at Folio 226 et seq.

(Signed) W. D. ST. ALEXANDRE,
[SEAL.] *Dy. Clerk, ex-Officio Recorder.*

P. 1.

Filed in evidence by Plaintiff at the trial of this cause on February 9th, 1914.

STATE OF LOUISIANA,
PARISH OF ST. BERNARD, April 26th, 1912.

Daniel Shaw.

SIR: In conformity with the provisions of Act 170 of 1898, you are hereby officially notified that the State and Parish taxes
28 assessed to you on immovable property in this Parish are as follows:

Description of property.		Assessed value.
4,122 Acres situated in the 7th Ward	State Tax	$10.30
	Parish Tax	20.61
	Levee Tax	20.61
	Bayou Acreage Tax	1,030.50
	Con. Vet. Tax	.41
	Road Tax	10.30
	State Good Roads Tax	.52
	Notice	.25
	Interest, including May	109.32
	Costs	.....
Total $2,061.00		$1,202.82

fell due on Sept. 27th, 1911, the day the Tax Roll was filed in the Mortgage Office of this Parish, and should have been paid full on or before the 31st day of the month of December next succeeding said filing; that you became delinquent for said taxes on the 31st day of the said month; that the said taxes will bear interest at the rate of two per cent from the 31st day of December last, until paid in full; that after the expiration of twenty days from the date of this notice, I will advertise for sale each specific piece of the immovable property on which the said taxes are due, in the manner provided by law for judicial sales; that at the principal front door of the Court-House where the Civil District Court of this Parish is held, I will sell, within the legal hours for judicial sales for cash and without appraisement, such portion of each specific piece of the said property as you shall point out; and in case you shall not point out sufficient property, I will at once and without further delay, sell for cash and without appraisement, the least quantity of said specific property which any bidder will buy for the amount of the taxes, interest and costs.

Respectfully yours,

ALBERT ESTOPINAL, JR.,
Sheriff and Tax Collector,
Parish of St. Bernard, La.

29 P. 2.

Filed in evidence by Plaintiff at the trial of this cause on February 9th, 1914.

STATE OF LOUISIANA,
PARISH OF ST. BERNARD, March 8th, 1913.

Daniel Shaw.

SIR: In conformity with the provisions of Act 170 of 1898, you are hereby officially notified that the State and Parish Taxes assessed to you on immovable property in this Parish are as follows:

Description of property.	Assessed value.		
41,122.05 acres. Ts. 12, 16 & 15, Range 17 East.	$2,061.00...	State Tax	$10.30
		Parish Tax	20.61
		Levee Tax	10.30
		Acreage Tax	.....
		Poll Tax	.....
		Road Tax (Special)..	10.30
		Per Capita Tax.....	.....
		Con. Vet. Tax.....	.41
		Good Roads Tax.....	.51
		Bayou T. Aux-Boeufs Drainage Tax	1,030.50
		Interest	.....
		Costs	.25
		Total $2,061.00.....	$1,104.74

fell due on —— —, 19— the day the tax roll was filed in the Mortgage Office of this Parish, and should have been paid in full on or before the 31st day of the month of December next succeeding said filing; that you became delinquent for said taxes on the 31st day of said month; that the said taxes will bear interest at the rate of two per cent from the 31st day of December last, until paid in full; that after the expiration of twenty days from the date of this notice, I will advertise for sale each specific piece of the movable property on which the said taxes are due, in the manner provided by
30 law for judicial sales; that at the principal front door of the Court House where the Civil District Court of this Parish is held, I will sell within the legal hours for judicial sales for cash and without appraisement, such portion of each specific piece of the said property as you shall point out; and in case you shall not point out sufficient property, I will at once and without further delay, sell for cash and without appraisement, the least quantity of said specific property which any bidder will buy for the amount of taxes, interest and costs.

Respectfully yours,

ALBERT ESTOPINAL, JR.,
Sheriff and Tax Collector,
Parish of St. Bernard, La.

P. 3.

Filed in evidence by Plaintiff at the trial of this cause on February 9th, 1914.

STATE OF LOUISIANA,
State Land Office:

BATON ROUGE, March 11th, 1913.

Messrs. Richardson & Soule, Att'ys at Law, New Orleans, La.

SIR: Your favor of 4th is received, in reference to the redemption of the property adjudicated to the State for non-payment of taxes for the year 1911, in the name of Daniel Shaw, Parish of St. Bernard, and described as follows:

"T. 12, R. 17, Sec. 2, 517.05 acres; T. 16, R. 17, Sec. 1, 638 acres; T. 16, R. 17, Sec. 2, 605 acres; T. 16, R. 17, Sec. 11, N. ½ of S. E. ¼, 480 acres; T. 16, R. 17, Sec. 12, 472 acres;
31 T. 16, R. 17, Sec. 14, 502 acres; T. 15, R. 17, Sec. 20, 457 acres; T. 15, R. 17, Sec. 22, 397, acres; Total Acreage 4,122.05 acres.

The amounts to be remitted to this department, payable to the State Treasurer, to effect the redemption of this property are as follows:

State Tax, year	$10.30
Interest, year	1.23
Confederate Veteran Tax, year	.46
Good Road Tax, year	.58
Levee Tax, year	23.08
Cost of adjudication	7.50
20% Penalty (on above amounts)	8.63
Total	$51.78

NOTE.—Parish Taxes for the year 1911 and all subsequent (or accrued) State, Levee and Parish Taxes due up to date must be first paid to the Tax Collector, and his statement (or the Tax Receipts) showing the payment of such taxes, must be forwarded to this department with a remittance to cover the amount above stated. (See Act 41 of 1912).

Respectfully,

FRED. J. GRACE,
Register State Land Office,
By VENTRISS.

(Book P. 1911, Folio 22.)

P. 4.

Filed in evidence by Plaintiff at the trial of this Cause on February 9th, 1914.

Act No. 41 of 1912, Page 49.

July 1st, 1912.

"That if the owner or any person interested personally,
32 or as heir, legatee, creditor or otherwise, in any lot or land

bid in for and adjudicated to the State, as long as the title thereto is in the State, shall pay to the Treasurer of the State the taxes, interest and costs and 20% thereon; the Register of the State Land Office & etc.

Provided all taxes, State and Parochial, District and Municipal are paid due to the day of redemption, paid on said property.

P. 5.

Filed in evidence by Plaintiff at the trial of this cause on February 9th, 1914.

March 4th, 1913.

Hon. Paul Capdevielle, State Auditor, Baton Rouge, La.

DEAR SIR: We represent Mr. Dan'l Shaw of Thief River Falls Minn. an owner of certain swamp lands in St. Bernard Parish, which we are advised were sold for taxes of 1911 to the State and we wish to see about paying the amount due the State, to redeem same.

The lands are described as follows:

Sec.	2	in	T.	12	S.	R.	17	E.	..... 571.5 acres
"	1	"	"	16	"	"	"	"	..... 638.
"	2	"	"	16	"	"	"	"	..... 605.
"	11	"	"	16	"	"	"	"	N. ½ & S. E. ¼.... 480.
"	12	"	"	16	"	"	"	"	..... 472.
"	14	"	"	16	"	"	"	"	..... 502.
Secs. 20 & 22 in T. 15, S. R. 17, E..... 854.									

Kindly advise the amount necessary to redeem. We are further advised that the drainage tax was imposed upon these lands,
33 but same is illegal, as the lands for the most part lie outside of the drainage district, and those which are within the district lie outside of the portion to be benefited, and under Sec. 21 of Act 317 of 1910 and under Act 219 of 1912, such acreage tax shall only be imposed upon such lands in the district as are especially benefited by the drainage.

Kindly advise if you will accept the taxes which are due the State without requiring a payment of this illegal acreage tax, or if you will require a suit to set aside the sale.

Awaiting your favor.

Yours very truly,

——— ———.

P. 6.

Filed in evidence by Plaintiff at the trial of this cause on February 9th, 1914.

Register of State Land Office,
State of Louisiana.

BATON ROUGE, May 30th, 1913.

Mess. Richardson & Soule, Attorneys at Law, New Orleans, La.

DEAR SIRS: I am in receipt of your letter of the 28th inst. wherein you ask to know if I will accept $51.78 as the amount due the State from Mr. Shaw, whose property situated in St. Bernard Parish, has been adjudicated to the State for the non-payment of taxes for the year 1911 to redeem same, and in reply will say that, under the provisions of Act 41 of 1912, before redemption can issue it is necessary that all subsequently accrued State Taxes, other than the tax for the year in which it was adjudicated to the state, which amounts are payable under that act to the State Treasurer to be paid to
34 the Parish Tax Collector, and his receipts therefor forwarded to this office as evidence of such payment.

If you will pay the Parish, Levee, drainage and any other tax- that are due other than the ones shown on the statement sent by me, which amounts to $51.78 together with all the taxes for the year 1912, and send me a certificate, or the receipts, showing such payment of such taxes, redemption can issue, otherwise I will have to refuse to permit the redemption of this property.

You say that the drainage or acreage tax was illegally assessed against the property. In that case you will simply have to get acquittance from the Tax Collector before you can redeem from the State. It may be gotten as a cancellation or deduction by him of the taxes, which you say are erroneous.

In any case a compliance with Act 41 of 1912 is sufficient to obtain redemption from this office.

I will be glad to hear further from you on this matter and I will assist you in any way possible.

Yours truly,
(Signed) FRED. J. GRACE,
Register State Land Office.

Extract from Map of the Bayou Terre-Aux-Boeufs Drainage District.

Filed in evidence by Plaintiff at the trial of this cause on the 9th day of February, 1914.

The map above mentioned, in Original Form, is annexed to one of the Three Transcripts filed in this cause.

(Here follows map marked p. 34.)